

Billy Jones Hearing Notes
Wednesday, September 22, 2010
Espanola Public Schools Administration Complex
3:45 p.m.

Hearing Officer:

Dr. Fidel Trujillo, Assistant Superintendent for Operations

Hearing Clerk:

Esther Romero, Human Resources Manager, Notary Public

Presenters:

- Ms. Devanna Ortega presented the case for the District
- Ms. Shannon Kennedy, Attorney, (representing Billy Jones' parents) presented the case for the student via telephone. Parents signed a FERPA release form giving consent for the educational records of Billy Jones to be discussed in front of the legal representative.

(Please see attached script regarding purpose of the Hearing)

Witnesses:

Witnesses for the district:

- Officer Danny Pacheco, School Resource Officer, Espanola Police Department
- John (PJ) Trujillo, Teen Court Coordinator, Espanola Municipal Court
- Dr. Lloyd Vigil, School Psychologist, Espanola Public Schools
- Mr. Arthur G. Salazar, EVHS Principal

Witnesses for the student:

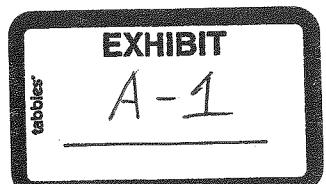
- Cecilia Jones (mother)
- Timothy Jones (father)*

*Mr. Jones was initially not listed as a witness. As he listened to the testimony of Officer Pacheco, he began to refute some of the testimony. Mrs. Kennedy then asked that Mr. Jones be allowed to testify. He and Mrs. Jones were then excused from the hearing until they were called to testify.

Hearing Clerk Esther Romero administered the oath and swore in all witnesses.

Evidence Exhibits:

District Exhibit A: Packet containing Incident Report from ProSec Services (completed by Security Officer A. Rosas) and dated 9/7/10; e-mail communication from Teacher Josefina Litera to Counselor Gloria Champion; five (5) drawings and three (3) lists reportedly created by Billy Jones.



Evidence Exhibits (continued):

Student Defense Exhibit A: Uniform Incident Report, Incident No. 10-09-155, including incident narrative.

Student Defense Exhibit B: Incident Narrative from Officer Ernie Romero (the narrative is unsigned and although several attachments are referenced in the text, there were no accompanying attachments).

Student Defense Exhibit C: Note from Dr. N.H. Patt (Presbyterian Medical Services) documenting preliminary psychiatric evaluation for Billy Jones.

Opening Statements

Ms. Ortega stated that on September 7th, she was approached by a faculty member who was concerned because several students in her class were scared of Billy Jones because they had allegedly seen drawings and a list of student names that was perceived as a hit list. Attempts to reach the student's mother were unsuccessful. EVHS personnel contacted the student's father and made him aware of the issue.

Ms. Kennedy stated that upon reviewing police reports and other documents related to this case, it appears that Billy was a student who was severely bullied at the Espanola High School. At no point did he publish pornographic or obscene materials to anyone in a threatening manner. It seems that these materials were taken from him in violation of his right to privacy and published by others. At no point did he pose a threat to himself or others on school grounds.

Summary of Testimony

Officer Danny Pacheco

Officer Pacheco testified that he was involved in questioning Billy Jones about a possible hit list including names and graphic drawings depicting violence. He suggested bringing Billy into the office to question him. He stated that he contacted Lt. Christian Lopez from the Espanola Police Department, but Lt. Lopez was unable to attend the hearing. Officer Pacheco testified that Billy was distraught and nervous. Officer Pacheco testified that normal search procedures were followed when Ms. Ortega ordered the search, Security Officer Alex conducted the search in the presence of Security Officer Chris Archuleta, Ms. Ortega, and SRO Pacheco. When asked if he had anything on his person that could shed light on the situation. According to Officer Pacheco, Billy offered his sketch pad on his own accord and turned it over to Officer Pacheco. Officer Pacheco described the drawings as figures and headstones with students' names and nicknames, as well as "Rest in Hell" or "Send to Hell". He described the graphic nature of a drawing he called "Human Piñata" representing kids that were bullying him and hurting him. Billy stated that the picture depicted what he wanted to do those kids who had hurt him: that he

wanted to hurt them back. Officer Pacheco stated that Billy understood that what he had drawn meant he wanted to hurt people.

Officer Pacheco said that in addition to the security guards, a Teen Court staff member were present during the testimony. The school psychologist was called in to help the student. Officer Pacheco was present during phone calls to Billy's mother and father. He recalled an exchange where Billy's father asked Billy if he had "taken it to school" allegedly referring to a knife. Besides this commentary, it was not established that a weapon was actually found on Billy's person.

Officer Pacheco observed that Billy's body language on the afternoon of September 7, 2010 expressed anger and tension. He clenched his fists, put his hands to his head, grabbed his hair, and punching his hand. Officer Pacheco said that based on his training, Billy appeared very unstable and that the next thing was to act out his drawings in person. Officer Pacheco stated that he had vast amount of training in school violence. His record and credibility were questioned by Mrs. Kennedy during cross examination. During cross-examination Officer Pacheco stated that an incident occurred last school year in which Billy threatened to harm another student with a "potion" that he had brought to school because she had teased him.

Officer Pacheco stated that he stepped out of the office while Dr. Vigil interviewed Billy. He briefed Lt. Lopez who took over the investigation. Officer Pacheco did not interview students regarding this case, that Lt. Lopez subsequently interviewed them. Lt. Lopez instructed Officer Pacheco to dispatch an ambulance to EVHS out of concern for Billy's wellbeing.

Teen Court Coordinator John Trujillo

Mr. Trujillo testified that he was in Ms. Ortega's office when Billy Jones was brought in to the office. He noted that a search was conducted by security guards. When the drawings were discovered, Billy stated that they were "movie scripts" he was working on, but Billy never gave any indication for when the drawings or lists were made. Mr. Trujillo described the drawings he saw and the relationship to names that were listed in the notebook. He described the "Human Piñata" drawing as a picture of people in a bag or sack and someone depicted as hitting the bag with an axe. The pictures contained a lot of blood and gore, they depicted torture. A review of the material was the cause for growing concern about Billy. Mr. Trujillo testified that names appearing in Billy's list and drawings belonged to students who had been picking on him. Mr. Trujillo testified that the document in Billy's note pad entitled "List for Hell" was initially crumpled up and that the drawings submitted as evidence by the District were discussed with Billy on September 7, 2010. During Mr. Trujillo's testimony, Mrs. Kennedy pointed out that none of the lists were entitled, "Hit List". Ms. Ortega described the process for identifying students on the list, which entailed comparing the names to class rosters. When asked if students were interviewed, Ms. Ortega answered in the affirmative and stated that they and their parents were concerned for their safety. Mr. Trujillo stated that he removed himself from the office so that Dr. Vigil could conduct his questioning.

School Psychologist Dr. Lloyd Vigil

Dr. Vigil stated that he was called to Ms. Ortega's office due to the erratic behavior of a student. He explained that his role is to promote student success in the school, primarily for students in the Special Education program, but that he is sometimes called to evaluate and assist regular education students. He was told that there were some drawings that were of concern to staff. He stated that he observed the student who appeared distraught and in acute distress. He characterized the erratic behavior as tearful on the one hand, and a positive affect on the other. Dr. Vigil did not have prior interaction with Billy Jones. He said that in the course of his questioning, Dr. Vigil learned that Billy had recently attempted to choke his mother. He stated that Billy's responses were very fragmented. He characterized the behavior as "unusual" and said he thought Billy may have been under the influence of a controlled substance. Dr. Vigil inquired about any medication Billy may have been taking and Mrs. Jones responded in the negative. Dr. Vigil stated that Mrs. Jones reported that Billy was being seen by a physician through Santa Clara Pueblo medical services.

Dr. Vigil discussed his professional experience in analyzing the projective nature of Billy Jones' drawings. He also cited other objective measures and interviews used to help indicate what someone may be experiencing. He stated that his general recommendation relied on a combination of the pictures and the student's presentation in describing the pictures. He also stated that there is reliance on other measures: adults in their lives who are knowledgeable about the student's behavior, their grades, self-reports on self-esteem and self-harm ideation. Dr. Vigil stated that because of no basis of knowledge, he did not have these other measures to properly evaluate Billy. However, Dr. Vigil stated that there was some decompensation displayed by laying his head on his mother (and mother laying her head on him), the regressive nature of Billy's behavior was demonstrated by Billy alluding to suicidal thoughts. In fact, it was the comment on suicide more than anything that led to Dr. Vigil's recommendation for psychiatric evaluation.

Regarding reintegration to Espanola Valley High School, Dr. Vigil stated that he hopes Billy gets the support that he needs. He testified that it sounded as if Billy has been struggling with things in his life for a while. Dr. Vigil stated that he hasn't spoken to any particular student who was allegedly on the list, but that in general there is "talk" of students being scared about this sort of student because people are aware of the situation and apparently Billy had talked to students about it. Dr. Vigil stated that it would be very difficult to have Billy reintegrate to the school because a lot of the students know who he is and what has been alleged. Dr. Vigil testified that in considering both age equivalency and grade equivalency, in order to benefit from coming back to EVHS, Billy needs to have an evaluation and that the people who are evaluating him communicate with school officials so that we make sure he gets the support he needs.

Procedurally, Dr. Vigil stated that what typically happens when students are referred to the type of evaluation Billy was referred to, is that he facilitates a committal by securing ambulatory transportation for evaluation in Santa Fe because there is no psychiatric unit locally. When it's indicated, sometimes patients are referred to Albuquerque. Dr. Vigil's

thoughts were that Billy would be evaluated and the evaluating doctor would make a recommendation for long-term acute care or at least overnight evaluations. Typically, a psychiatrist would evaluate such things as medication need, history of decompensation. He said that doctors rely a lot on parents for information about prior attempts or other indicators because adolescents can be impulsive and their prefrontal lobe is not yet fully developed. Dr. Vigil stated that he was not aware how Billy was evaluated or what the results were. In this particular case, Dr. Vigil stated that Mrs. Cecilia Jones was as helpful as she could be, but she was also distressed about Billy's behavior. He stated that multiple attempts to reach the hospital were made, but he was unsuccessful in reaching a psychiatrist who may have evaluated Billy. He also stated the hospital is under the obligation to not report too much information and that since Billy's mother picked him up, it's likely that any information would be divulged only to the parent. Dr. Vigil stated that he did call to verify that the student had arrived at the hospital, but that he didn't get information related to Billy's release.

Under cross-examination, Dr. Vigil testified that play therapy and sand therapy are media for young children who are non-verbal to express themselves and synthesize their emotions. When asked by Ms. Kennedy if in the case of an adolescent who appears to be very regressed (as Billy appeared to be on this day with his mother), whether it made sense from a therapeutic perspective to ask Billy to express his frustrations or emotions through art, Dr. Vigil said "It does." Mrs. Kennedy asked whether the drawings might be some form of art therapy. Dr. Vigil stated that what he saw did not constitute art therapy. In his professional opinion, he never saw drawings of this nature to be considered art therapy. He speculated that if someone did prescribe that, there would be a systematic way of helping the student understand and a therapist would know that if art therapy is the prescription, you don't want to have it in a public place, rather, it would be carefully monitored in a private setting so as to help facilitate resolution instead of creating greater scrutiny. Dr. Vigil repeated that it wasn't the matter of the drawings in isolation, but it was the drawings in combination with statements Billy made that were of concern. Dr. Vigil stated that Billy's statements of people who had picked on him in combination with pictures of decapitation were particularly concerning. Dr. Vigil agreed with Ms. Kennedy's assertion that, whatever the outcome, Billy requires some sort of therapeutic intervention to help him manage some of the experiences he has gone through. He clarified that his recommendation was not for psychological evaluation. Rather, Dr. Vigil was concerned about acuity. He stated that there are kids he works with who are gifted and display emotional aggression, and do well in school. But if they display any acuity in the class or in school, then Dr. Vigil said it's his job to ensure that the acuity is managed as best as possible. Based on the information (or lack thereof) provided by Billy, the acuity and erratic behavior is what was of major concern. Dr. Vigil categorized the behavior as bizarre and that is why he recommended the referral to St. Vincent's because students he has worked with who display those types of behavior are often psychotic, either by history of psychosis or by drug-induced psychosis. When asked whether he had diagnosed Billy on that day as psychotic, Dr. Vigil answered in the negative. When asked if he had sent him to St. Vincent's for a psychiatric evaluation, he stated that he "facilitated" along with the student's mother, a recommendation to be treated by someone

at a psychiatric facility. That recommendation was made after his primary physician, as identified by his mother, could not be reached.

EVHS Principal Arthur Salazar

Mr. Salazar testified that his involvement in the investigation was fairly limited but that he had been informed by Ms. Ortega that there was a problem involving gory pictures and a purported hit list. Mr. Salazar said he authorized the investigation and placed Ms. Ortega in charge of it. Mr. Salazar stated that the concern of Officer Pacheco was such that he invited Lieutenant Christian Lopez to come in and assist with the investigation. Mr. Salazar verified earlier testimony that it was Dr. Vigil's recommendation, accompanied by Cecilia Jones' consent, for Billy to be treated by a psychiatrist at Christus St. Vincent's Hospital in Santa Fe.

Mr. Salazar stated that he knew Billy Jones very well because Billy was a student at the Espanola Military Academy last year where Mr. Salazar was Principal. The Military Academy was essentially shut down and Mr. Salazar was offered the position of EVHS Principal. He stated that he made strong efforts to remain visible and accessible to all students at EVHS, but particularly those students like Billy, whom he knew from the Military Academy. Mr. Salazar stated that he was very cognizant of the fears of the students transitioning from a small school setting (Espanola Military Academy) to a large school (EVHS). It was Mr. Salazar's testimony that he specifically sought out Billy Jones to ask him how things were going. Mr. Salazar stated that all the feedback he received from Billy were that things were going o.k. and that he never reported any bullying. He further testified that Billy did not demonstrate any academic problems that he was aware of nor had he been referred to the Principal's office this school year prior to this incident.

Under cross-examination, Mr. Salazar stated that he learned from talking to Billy's father that Billy wasn't being charged criminally for the incident with the pictures and lists. Regarding reintegration, Mr. Salazar said that given the circumstances, it would be extremely difficult for Billy to have a successful reintegration back to EVHS. He cited the uproar from the students who were said to be on the list would make for a tough environment for Billy, surmising that teasing and bullying might be escalated. Mr. Salazar stated that he would have big worries if Billy were allowed back in school. Not knowing enough about Billy's evaluation to speculate on his condition, Mr. Salazar said he would be equally concerned for Billy's safety.

Timothy Jones

Mr. Jones testified that he is the father of Billy Jones and that he presently resides in Georgia. He stated that he received a call from EVHS Assistant Principal Devanna Ortega on the afternoon of September 7th in the late afternoon. Mr. Jones stated that Ms. Ortega was excited and "frazzled" because of some pictures that Billy drew and that children were fearful for their lives. Mr. Jones was informed that Billy was searched and no weapons were found. Mr. Jones expressed anger at the fact that nobody told him he was on speaker phone when he was given the opportunity to talk to Billy on the afternoon of September 7th. Mr. Jones said that when he asked his son what happened, Billy told

him that a student in biology class took his notebook from him in the class where a lot of bullying had taken place. Mr. Jones stated that he had not seen the pictures Billy drew, but that Billy has always been a very good artist. He stated that Billy's demeanor during the conversation was calm and scared. Mr. Jones also stated that no one advised him or Billy that Billy had the right to leave the Principal's office at any time or that he had a right to remain silent. Mr. Jones answered "No" when asked if anyone had asked his consent for Billy to be questioned or for Billy to be seen by the school psychologist. Mr. Jones also testified that he never knew Billy to threaten anyone or to talk about suicide. Mr. Jones disputed Officer Pacheco's testimony and denied any conversation about a knife or weapon at school. Mr. Jones also testified that he has no knowledge whatsoever of Billy physically abusing Cecilia Jones and that he has never known Billy to be violent in any way. When asked if he had advised Billy about handling the bullying he was allegedly experiencing, Mr. Jones stated, "If you're life is being threatened, protect yourself. If your life is not being threatened, walk away, find a teacher, tell somebody, tell an adult." Mr. Jones testified that he did not know whether or not Billy ever reported the bullying to an adult.

Mr. Jones testified that he had seen but was unable to read the evaluation report from St. Vincent's Hospital. He understood that Billy was fine and had, in fact, been released on the night of September 7, but that his wife suffers from high anxiety and night blindness and would not be able to pick him up until the following morning. Mr. Jones said he spoke on the telephone with a crisis management therapist and asked if Billy could spend the night. When asked if he had documentation pertinent to the evaluation and release from St. Vincent's, he stated that he did not bring it with him.

Mr. Jones testified that Billy was seen by an Art Therapist, Sarah Whitmeier of the Presbyterian Medical Services and that she told him that Billy was not a threat to himself or others, but that was made in conversation and he had no documentation to that effect. Mr. Jones cited the letter from Dr. Patt, who stated in writing that Billy was not a threat to himself or others.

Mr. Jones testified as to Billy's grades in school, calling it a "variety pack". He said last year Billy earned A's in ROTC and Construction Skills, a couple B's and C's, and a D in Math. Mr. Jones stated that he believes Billy has the intellectual and emotional capacity to succeed in school.

Under cross-examination, Mr. Jones re-stated he did not recall being informed that he was on speaker phone during his conversation with Billy. Mr. Ortega also asked him if he recalled asking Billy, "Did you bring it with you to school?" Mr. Jones said he was talking about the sketch pad. Ms. Ortega stated that Billy's interpretation regarded a knife. Mr. Jones said that no one ever mentioned the knife during the conversation. Mr. Jones reiterated that no weapons were found during the search. Ms. Ortega asked Mr. Jones to clarify whether Billy had reported the bullying to an adult, to which Mr. Jones repeated that he did not know. Regarding the drawings, Mr. Jones stated that art is art and that there is such a thing as freedom of expression, protected outside of school by the first amendment of the constitution. When shown copies of the drawings, Mr. Jones

stated that he is legally blind and without his personal machinery, it's very hard to distinguish anything from the copies.

Mr. Jones was asked a follow-up question regarding Billy's intellectual and emotional capacity for educational success to include academic and emotional success at Espanola Valley High School. Mr. Jones stated that Billy is scared to death, afraid to leave the reservation. According to Mr. Jones, Billy sees the reservation as a safe zone. Mr. Jones stated, "He has seen the news and knows what is being said about him." Mr. Jones said that right now it would be very difficult to send Billy back to EVHS because bullying is a nation-wide problem that needs to be addressed.

Cecilia Jones

Mrs. Jones testified that she could not recall who called her to inform her that her son was in trouble, but that it was a school faculty member. They told her about issues regarding Billy and she went to the school between 2:00 and 4:00 p.m. She stated that there were five or six adults in the room with Billy. Mrs. Jones testified that she suffers from high anxiety and panic attacks and that day an incident had happened that made her distraught, upset, and she had been crying before going to the school. When she got to the high school, Mrs. Jones said she did not understand the questions they were asking her or Billy. School officials mentioned pictures and a list. Mrs. Jones testified that she did not recall stating to anyone that her son had choked her. According to Mrs. Jones, if she said that, she didn't remember because when she gets panic attacks she gets disoriented and comes "in and out of memory". Mrs. Jones stated that Billy never choked her and that he would never hurt a fly. Mrs. Jones said that the last thing she remembers is that they were taking Billy to the hospital for evaluation.

Mrs. Jones stated that she mentioned to school officials that Billy had been seeing a counselor. She testified that she was never shown any pictures, any lists, any weapons, or any evidence. When asked if school representatives asked her if Billy had ever mentioned killing himself, she answered, "They may have, but I don't remember." She said that, to her knowledge, Billy has never mentioned hurting himself and has never threatened others.

Mrs. Jones said that Billy was always being picked on at the Military Academy but was unsure if he ever reported it to anyone. Mrs. Jones stated that she was "fixing to" report the bullying and that is what the list was about. She said she asked Billy to write down the names of the people who were bullying him so she could report them to the Principal. Mrs. Kennedy asked Mrs. Jones whether she had been told about any anti-social tendencies or any form of psychosis. Mrs. Jones said no one ever mentioned those words to her. Under cross-examination, Mrs. Jones was asked if she understood what "anti-social tendencies" or "psychosis" mean and she said no. She said that even though the doctor used big words, that when she explained them, she said Billy is a perfectly normal little boy. Mrs. Jones testified that Dr. Patt's recommendation for further comprehensive psychological evaluation was because of the trauma that Billy had been through because he had been beaten up in school. Also under cross-examination, Mrs. Jones said that she didn't let anybody know during the interview that she was not feeling well because she

was in shock and trying to figure out what was going on. She said that while she had not seen the drawings, she was familiar with his art. When shown the drawings, Mrs. Jones stated that the pictures didn't shock her. Mrs. Jones said that Billy was into wrestling, where they use props, and horror movies such as Friday the 13th. She said Billy's dream is to become a movie director so he described his art as "make believe stuff".

Furthermore, Mrs. Jones testified that Diana Gutierrez, a counselor from Santa Clara Pueblo, encouraged Billy to draw pictures if he was ever feeling overwhelmed. She stated that on the day of the questioning at the high school, Billy may have mentioned hurting himself, but only because he was scared.

Towards the end of her testimony, Mrs. Ortega asked Mrs. Jones if she knew what names were on the list. Mrs. Jones responded that the lists contained names of kids who had bullied Billy. Mrs. Ortega asked her if she was aware that Billy's girlfriend's name was on the list and Mrs. Jones said no. Mrs. Ortega pressed, "Was his girlfriend bullying him? Why was her name on the list?" Mrs. Jones replied, "I have no earthly idea, you'll have to ask him. He would never hurt her. He loved her so much, he thought she was the best thing since peanut butter." In her closing statement, Mrs. Jones said, "My son has never hurt anybody. He could if he wanted to. If he wanted to threaten me, he would have drawn pictures. He's never done anything like that. He's never threatened me with knives or anything like that."

Closing Statements

Mrs. Ortega stated she has major concerns for the safety of the students whose names appear in the lists created by Billy and as well for Billy's own safety. She said she's not sure how he would feel knowing that he's not welcome at the school. As far as the bullying, Ms. Ortega stated that she wished she would have known about it so that she could have done something to address it. She said that making a list and threatening students by drawing pictures which suggest sending them to hell is not the appropriate way to deal with the issue of bullying if it really exists, since the first time she heard about it was when Billy was caught with the disturbing drawings. Mrs. Ortega also expressed concern that Mrs. Jones didn't remember half of the things she said that day, and so she probably didn't believe half the things Billy said that day either. Mrs. Ortega quoted Mrs. Jones' final statement about drawing pictures in order to threaten her as proof that the drawings, indeed, constituted threats. The pictures and the names on the list were a threat to students and the recommendation from the high school administration is for an expulsion for Billy Jones for the remainder of the school year.

Mrs. Kennedy stated that she would like to supplement the record within the next 48 hours with supporting documents from various therapists and counselors. Mrs. Kennedy pointed to the notification letter which spelled out that Bill was a threat to students, yet they did not call a single student to testify that they felt threatened. Mrs. Kennedy argued that the school is placing the burden of proof on Billy's parents that, as Dr. Vigil testified, this is an extremely unfair situation for Billy. She stated that Billy's private journals were exposed by a bully in his Biology class. Mrs. Kennedy stated that Billy was taken to the Principal's office where his journals and all his private belongings are exposed to

Danny Pacheco, who may be the biggest bully at Espanola Schools. Mrs. Kennedy concluded by saying that Billy Jones is continuing to be victimized and the school is refusing to accommodate him because they have created a situation where they have reported to the media and reported to everyone that Billy created a hit list of students. She argued that nothing had been entered into evidence that constitutes a hit list. That Officer Pacheco and the other officer's subjective characterization of a hit list has succeeded in terrifying the community out of context completely ripping Billy of his art work and to paint him as a Columbine-esque monster. Mrs. Kennedy stated that the person who is most threatened and most injured is Billy Jones. "This school district has made a mess of Billy's life. Billy never threatened a soul. His private journal was taken from him and used to punish him out of context." She went on to say that administrators and school officials interrogated him in front of his mother who didn't know it was her right to say that they couldn't talk to her son or search his private belongings, depriving her a say in how her son was being treated.

(For the remainder of the script for the hearing's conclusion, please see attached).

Hearing was adjourned at 7:26 p.m.